



MICHIGAN TOWNSHIPS ASSOCIATION

February 7, 2012

House Oversight, Reform & Ethics Committee  
Michigan House of Representatives  
P.O. Box 30036  
Lansing, MI 48909

RE: House Bill 5335

Dear Chairman McMillin and Committee Members:

The Michigan Townships Association is opposed to HB 5335. The question has often been asked - may township officials participate in a meeting or hearing via teleconferencing?

This question has been responded to in the affirmative by both the Michigan Court of Appeals and the Michigan Attorney General, but not specifically regarding township meetings. Those opinions concerned hearing officer proceedings under the Department of Social Services and Intermediate School District meetings, respectively.

In the Court of Appeals decision *Goode vs. Michigan Department of Social Services*, 143 Mich App 756 (1985), the court was confronted with the validity of a contested case hearing before the Michigan Department of Social Services hearing officer wherein the Department of Social Services officially permitted teleconference hearings as distinguished from hearings in which all panel members were physically present at the location of the hearing. The Act under which the hearings were held specifically provided that they have to be held in accordance with the Michigan Open Meetings Act.

The court held that the purpose of the Open Meetings Act was to provide openness to the public of meetings and hearings. Proceeding through teleconference calls with speaker phones audible to all in the meeting room and with the ability of the public to attend at all locations involved in the teleconferencing fully complied with the Open Meetings Act. The court further stated:

"While we recognize that to actually see and observe all the witnesses and the hearing officer is desirable, we do not find it necessary."

This case was sought to be appealed to the Michigan Supreme Court which denied leave to appeal at 442 Mich 882.

The Michigan Attorney General in Opinion #6835 of February 13, 1995 was confronted with the question of whether an intermediate school district consisting of several constituent districts with representatives from each could hold its annual budget meeting by means of interactive television. The budget of such intermediate district was required to be approved by a majority of the school board representatives of constituent districts.

---Over---

S E R V I N G   1 2 4 2   T O W N S H I P S   A N D   6 5 0 0   O F F I C I A L S

The Attorney General concluded that a representative did not have to be physically present at the meeting but could be present through interactive television and comply with the Open Meetings Act. The Attorney General referred to the foregoing Goode case and concluded that interactive television was even more desirable than the teleconferencing medium sanctioned in the Goode case.

The Attorney General added that "the central site must be set up so that interaction among all the representatives of the constituent districts, whether they be on or off that site, and interested members of the public" is possible and provided for. This Attorney General's Opinion of 1995 appears to overrule his initial Opinion #5183 of 1977 which was issued prior to any court decision interpreting the OMA and prohibited teleconferencing for meetings.

The appellate court of Illinois in the case of Freedom Oil Company v Illinois Pollution Control Board, 275 ILL. App. 3<sup>rd</sup> 508; 655 NE2d 1184 (1995) cited the Michigan Goode case among others and held that a meeting in which two of a six member board were physically present at the meeting place and four were telephonically connected complied with the Illinois Open Meetings Act which was similar to the Michigan Act. In this connection, it held that a quorum was not required to be physically present and could be composed of members present through telecommunication. It held that whereas the better practice would be to have written rules concerning such procedure in place, the failure to have such rules did not void such telecommunication meetings.

While MTA does not recommend the general use of telecommunication for the township board, commissions, or committee meetings covered by the Open Meetings Act it recognizes the courts and Attorney General have indicated it is an available method which, if properly handled, does not eliminate public participation and openness of public action. Where the input of an absent member is deemed desirable, the Telecommunication Tool has been determined to be available. Therefore, we feel that the legislation is unnecessary as the courts have ruled that the general use of telecommunication is permissible.

Sincerely,



Thomas E. Frazier  
Legislative Liaison